

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, September 5, 2017
Time: 5:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Vice Mayor Grilli called the joint meeting to order at 5:01 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Vice Mayor Grilli, Councilmembers Barbadillo, Nuñez and Phan

ABSENT: Mayor Tran was absent for Closed Session and arrived for the start of the Open Session.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that the Mayor recused himself from Closed Session litigation items listed (e), (f) and (g) on the agenda.

City Council then convened in Open Session at 7:02 PM with all members present.

ANNOUNCEMENT

City Attorney Chris Diaz stated there was no announcement out of Closed Session.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led all in the pledge of allegiance.

INVOCATION

Councilmember Barbadillo offered a prayer to start the meeting.

PRESENTATIONS

Mayor Tran and City Councilmembers made the following presentations.

- Proclaimed September as National Preparedness Month, accepted by Milpitas Office of Emergency Services coordinator Toni Charlop. An Emergency Preparedness Fair was planned on Saturday, September 16 in the outdoors civic center plaza.
- Proclaimed September as Pain Awareness Month, accepted by Michele Rice of US Pain Foundation.
- Recognized five Recreation Services Lifeguards who were recent award winners at Bay Area Games including one Iron Guard winner.
- Scheduled to recognize leaders of the Swades Festival recently put on by the Association of Indo-Americans. However, this was postponed since no one from the group was present.
- Commended Ms. Laura Polden, Teacher of the Year from Milpitas Unified School District.
- Commended Flex Corporation and the NextFlex program, along with Milpitas Unified School District leaders and staff. Student Tavia Todd, who recently participated in the FlexFactor Workforce Development Initiative, presented a short powerpoint presentation and was honored for her unique technology project.

PUBLIC FORUM

Mayor Tran invited the City Manager to announce if there was any translation service for the public speakers. Police officer Lap La came to the podium, and addressed speakers in Vietnamese language and would translate if needed. Resident Ms. Van Lan Truong also came forward to offer to translate for any speakers who wished to address the Council in Vietnamese language.

Charlene Lee, resident, complained about actions of the Milpitas Police Department.

Steve Sedell, resident, was complimentary about the City work force, including police officers and elected officials. He appreciated the opportunity to speak freely at these meetings. Older people may need to listen to younger people, in the city. He felt very safe here.

Hien La, Sunnyhills resident, wanted City Council to do something, as promised last month, to help residents of the apartment complex, to have somewhere to move.

Lang Huy, Sunnyhills resident, addressed the Council in Vietnamese language. She saw her neighbors, some of whom were very ill, and they were worried. She heard that City Council was reaching out to an agency for help, and wanted to know if was there any result.

Guc Nguyen, Sunnyhills resident (on crutches), could stay there until June 2018 and was not sure about the future. He worried about the elderly living there.

Chuy Li, Sunnyhills resident, referred to the notice he'd received about having to move out by June 2018. He really needed City Council's help to save their homes.

Hang Do, Sunnyhills resident, was speaking on behalf of residents there and wanted to know results of the Council's decision and what were they going to do to help Sunnyhills.

Leah Beniston, representative of The True Life companies, was a pleased customer of the City of Milpitas until today. Her firm was seeking a General Plan amendment for a project in the Transit Area Specific Plan, and wanted to present the project on September 19, as scheduled. She dropped off a package to many officials last Friday. The company had already been to Planning Commission and got approval for the zone change requested, and after the fact, was getting staff objections to the project.

Councilmember Nuñez asked the Acting City Manager and the City Attorney to report back, on what the woman addressed. City Manager Steve Pangelinan was in communication with the Economic Development Director on this project.

Voltaire Montemayor, Milpitas resident, spoke of preparations needed in case a flood happened, and on the upcoming minimum wage increase. He liked all the presentations given earlier.

Robert Marini, Milpitas resident, spoke with his own opinion (not the Task Force) and displayed a chart Table 4-2: Potable Water Demand Projection. He discussed water use, water savings or loss, use of irrigation water, and costs for water for residents in the City.

ANNOUNCEMENTS

Acting City Manager Pangelinan made these announcements: (1) he recognized Engineering and Public Works departments' staff for all the work to get Calaveras Road successfully re-opened, (2) he noted the hurricane flooding in Houston, TX and would offer opportunities for staff to donate, and (3) on September 19, he would bring back a list/calendar of items for the City Council, put together by the City Clerk and himself.

Councilmember Nuñez commented to Sunnyhills residents that staff had been working diligently on the issue of housing and affordable housing. He had attended a meeting recently with the County Manager Jeff Smith, on resources available to help the City with Measure A dollars and what to do regarding Sunnyhills Apartments. He also met with the Director of County Housing Authority. Staff would bring back a plan to City Council to allow Council to look at four levels of affordable housing, and review the current stock of housing in the City, including Sunnyhills.

Vice Mayor Grilli thanked Mr. Pangelinan for bringing forth a calendar at the next meeting. She wanted to make sure the renewable energy report would be on the next meeting agenda. Economic Development Director Edesa Bitbadal said the proposal would be on the agenda in two weeks.

Councilmember Phan asked the City Attorney if it was possible to get an update from staff on the status of the Sunnyhills area, in an open setting, at a future meeting. City Attorney Diaz replied when staff had an update, he could do so. Mr. Phan also wanted to discuss signing on board for a

Sanctuary City resolution, in light of President Trump's action on this day on the DACA program. Residents needed a sense of relief. He spoke to audience members in Vietnamese language.

Councilmember Nuñez asked for a translation of what Mr. Phan said. Ms. Van Lan Truong came to the podium and said he had spoken of a sanctuary city resolution, and that he did not forget about Sunnyhills residents. He'd asked the City Manager and City Attorney to report back at the next meeting.

City Attorney Chris Diaz commented that the discussion on Sunnyhills Apartments would not be at the the next meeting, but would be held some time in the future.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Nuñez requested to remove items no. 1, no. 4, no. 6 and no. 11.

Councilmember Phan requested to move item no. 15 to be heard as the first item.

Mayor Tran wanted item no. 6 right after that.

Councilmember Barbadillo asked to pull item no. 8, and have no. 12 heard after no. 19.

City Attorney Diaz gave advice to approve the consent calendar first.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 5
NOES: 0

Mr. Diaz said the Council could rearrange order: to hear no. 15 first, then no.6, and then no. 19 and no. 12, and then the remainder of consent and open session items.

Vice Mayor Grilli responded if there were a large number speakers, then she did not want to move no. 15 before no. 6. The Council should respect those who wanted to speak.

Councilmember Phan made a motion to hear item no. 15 first, following by the changed order described. There was no second so the motion died.

Vice Mayor Grilli moved the following: stick to the schedule, move up item no. 6 due to the large number of speakers, finish consent, and then business as listed on the agenda. She said agenda item no. 15 could come after item no. 6.

Councilmember Barbadillo would second Mrs. Grilli's motion, with items no. 12 and no. 19 should be switched in order. The motion, with his second, was approved with all in favor.

1. Council Calendar

The Council received the City Council calendar for September 2017. Councilmember Nuñez asked various questions on who prepared the calendar and how items were added,

and initials noted next to some of the meetings when Councilmembers would be out of town at a conference in Sacramento.

Vice Mayor Grilli requested the addition of Saturday, September 16 for the Milpitas Emergency Preparedness Fair at 10:00 AM.

Motion: to accept the City Council calendar with changes noted for September 2017

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

* 2. Meeting Minutes

Approved City Council meeting minutes of August 15, 2017.

* 3. Odor Report

Received the monthly update of the Odor Control Report.

4. Waive Fees Association of Indo-Americans

Vice Mayor Grilli had removed this item from consent, stating her view that this group did not follow the fee waiver policy. She did not support this request, since it came after the event was held and in the past other groups were denied unless submitting their request ahead of the event.

Councilmembers made various comments about the request and the organization, and whether or not the City Council Donation and Fee Waiver/Reduction Policy (standard operating procedure 1-7) was followed, and whether or not the Association of Indo-Americans was a Milpitas group or had a local affiliation.

Councilmember Nuñez wanted to honor the request to waive the \$1,000 in park rental fees, and based on the City being certain it's a Milpitas organization. Councilmember Phan supported that comment.

Motion: to waive the requested fee amount of \$1,000 for the Association of Indo-Americans to rent Murphy Park for the Swades Festival held on August 6, 2017 - provided there is confirmation that this was a Milpitas organization

Motion/second: Councilmember Phan/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4
NOES: 1 (Grilli)

* 5. Resolution – MTC grant

Adopted Resolution No. 8695 to authorize filing an application for funding assigned to Metropolitan Transportation Commission and committing any necessary matching funds and stating the assurance to complete the 2019 Street Resurfacing Project.

6. Resolution – Vietnamese flag

This matter was heard first at the meeting.

Councilmember Phan stated this was a continuation of past discussion on the red flag of Socialist Vietnam.

Councilmember Nuñez referred to the recently adopted policy (Ordinance), and asked the City Attorney to clarify flagpoles for private speech. Council had recently updated City policy, which he explained. Mr. Nuñez thought that the policy applied if a Councilmember got a request, while Mr. Diaz said there could be no private request to fly a flag on a city flag pole.

Mayor Tran said that many residents in the City opposed the display of the communist government of Vietnam's flag.

Councilmember Barbadillo remembered this agenda item, with the red-lined copy of the ordinance (a copy was distributed at the dais to Councilmembers).

Councilmember Phan asked Councilmember Nuñez if a request was made to fly the Vietnamese flag. Yes, he said, it was the yellow flag with three stripes that for some was the only one recognized. Mr. Phan said the resolution before the Council at this meeting was in addition to not allow flying of the socialist red flag.

Vice Mayor Grilli referred to a letter that she had not seen (about the government of Vietnam opposing the resolution). She felt she was not getting all information.

Councilmember Nuñez wanted to adopt something on what he stands for, not opposing something. He wanted to state that the flag that the City recognized was the Vietnamese Heritage flag.

Councilmember Phan responded further, and said the City Council controlled flags that were allowed. He felt there was a current need to respond to what the residents wanted.

Mayor Tran opened the meeting for public comments.

Tam Nguyen, San Jose City Councilmember, thanked the Council and spoke of support for the American flag and the Vietnamese heritage one.

Van Lan Truong, resident, noted the emotional issue of the South Vietnamese flag. She supported Councilmember Phan for bringing up this subject and supported recognition.

Sun Pham, spoke in Vietnamese language to Council, had lived here for 42 years. He supported the Heritage flag and not the red communist flag.

Tin Cao, was grateful to Bob Nuñez for saying he supported the Vietnamese Heritage flag. She recalled when the City of Milpitas already recognized the yellow flag, under Mayor Jose Esteves. Now they wanted to oppose any flying of the red flag.

Ha Phan, a resident here for over 30 years, was here for the same purpose as in the past. They wanted Formosa out of Vietnam, out of her country.

Han Do, resident, spoke in Vietnamese language to the Council and supported the yellow flag with three stripes. The US government did not accept the red communist flag and the country had a lack of human rights.

Van Le, San Jose resident, spoke of the meaning of Vietnamese Heritage flag and her opposition to the red communist flag.

Minh Nguyen, Milpitas resident, supported the proposed resolution and the yellow flag.

Evan Le, spoke of his family fighting communism in South Vietnam and then came to U.S.

Hui voiced support for the proposed Resolution along with many other Vietnamese Americans. He wanted support for the heritage flag, opposed flying the communist flag, and voiced support for the local community.

Wing Chun, supported the proposed resolution and did not want to see the communist flag flying within the City anywhere.

Voltaire Montemayor, resident, felt the sadness when they see the flag opposed by the Vietnamese community.

Linda Ta, resident, spoke to the Council in Vietnamese language, supported the resolution proposed by Anthony Phan. She spoke of her personal story.

A man, spoke in Vietnamese language to Council (with a poster raised up), saying he was a former army member in South Vietnam. He did not want to see the red communist flag flown in this country.

A man, spoke in Vietnamese language to Council, asked why the communist regime would ever be allowed. He opposed the red flag and supported the yellow flag with three stripes.

A woman, spoke in Vietnamese language, thanked Council for supporting the yellow flag. The red flag was not the flag that was of the people in Vietnam. She supported the resolution by Councilmember Phan.

A man, spoke in Vietnamese language and held up a poster, opposed the communist regime. His family's assets were confiscated, so he strongly supported the yellow flag.

A man, spoke in Vietnamese language, reminded Council that 58,000 American soldiers had died in Vietnam. He lost family because of that red flag and appreciated that the U.S. government allowed people to come in to this country.

A man, spoke in Vietnamese language, said he was a former soldier. The communist regime was inhuman and brutal, and said within 10 years, that communism would be brought to the U.S. They had no respect for international law, he opposed the red flag.

A man, holding a yellow flag, spoke in Vietnamese language, spoke of what the communist government did to people and did not support things like religion and freedom of speech.

Mayor Tran thanked the many members of the community for coming out to the city Council meeting. He spoke of taking a stand on leadership and courage.

Councilmember Nuñez agreed with remarks by the Mayor about leadership. He knew what the yellow flag with red stripes meant. It was difficult to sit and not have answers to questions he'd been asking. Any flag on the pole should be for the right reasons. He wondered why there was no staff report with the resolution. He'd heard from the passionate community while he did not hear staff speak on this issue. He wanted to see the letter sent to the City Council from the Vietnamese Consulate (did not have it).

Councilmember Phan wanted to respond to the concerns of Mr. Nuñez. He did not post on social media on this topic. He said that Mayor Tran did receive a letter from the Vietnamese consulate and shared it with him (Mr. Phan). With concern for the Brown Act, he did not share it further. He read it aloud then. He noted that no one from the Vietnamese Consulate came in person to this meeting, as did the many supporters of the Vietnamese Heritage flag who came to Council Chambers.

Councilmember Barbadillo supported the Resolution, for the reason of the first amendment in the U.S. He appreciated the words spoken by the people who came to the podium.

Vice Mayor Grilli thanked the people who came and spoke. In future, if correspondence came addressed to Council, she asked that it was shared with all the members, in advance. She was supporting the resolution.

Motion: to adopt Resolution No. 8696 opposing the display of the flag of the Socialist Republic of Vietnam on City-owned flag poles

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by vote of: AYES: 5
NOES: 0

* 7. Join HGAC

Approved the City's membership in Houston-Galveston Area Council (HGAC) and authorized the City Manager to sign the membership contract with HGAC.

8. SIA for Summerhill Centre
Pointe Apartments

Councilmember Barbadillo asked the interim City Engineer Greg Chung some questions about process on project filing, conditions, and the tentative map. He asked staff for confirmation of the strict compliance with the conditions of approval. Mr. Chung reviewed the usual process.

With 36,000 square feet of commercial space, Mr. Barbadillo wanted to ensure that was built on site at this project. Planning Director Brad Misner came forward to discuss some details of the project, as entitled. Any substantial changes would have to go back to the Planning Commission, and ultimately to the City Council.

The developer's representative Marshall Torrin of Summerhill Homes spoke about the first phase of the Project (Parcel "B"), which was moving along, with plans approved. His company was in plan check for the on-site improvements, with the second building permit issued for the parking garage. The retail/residential segment of the project was all one building, with an anticipated permit to be issued in October. He further described details of the project design.

Mayor Tran asked about the commercial space and layout of that 13,000 square foot for the first phase and Mr. Torrin replied he'd work with a broker to fill that space when ready.

Motion: to approve and authorize the City Manager to execute the Subdivision Improvement Agreement for the mixed-use development project located at 1646 Centre Pointe by SHAC Centre Pointe (Summerhill Homes)

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

* 9. Amendment

Approved Amendment No. 1 to the Agreement with RMC Water & Environment to increase compensation in the additional amount of \$8,812 for Marylinn Drive Sanitary Sewer Replacement, Projects No. 6115 and No. 6116.

*10. Amendment – Waste
Management of South Bay

Approved Second Amendment to the franchise agreement for disposal of solid waste with USA Waste of California, Inc. doing business as Waste Management of South Bay.

11. Pay for Emergency Repair
of Fire Engine

Director of Public Works Nina Hawk along with Deputy Fire Chief Rick Frawley came to the podium. Councilmember Nuñez asked the staff why there was no fiscal impact listed for the costs of the repair to the fire engine.

Ms. Hawk responded about maintenance done on fire engines throughout the year, and on this one specifically in the last 12 years. Some costs were absorbed for routine and repair maintenance for vehicles like this, in the adopted budget annually. Funds were budgeted for this type of expense so there was no fiscal impact (no increase needed).

Councilmember Nuñez asked the lifespan of a vehicle like this. Deputy Chief Frawley replied that the apparatus would be replaced with one of the two new Fire vehicles recently approved by City Council for purchase this fiscal year.

Staff provided more information to Mr. Nuñez about this vehicle, repair work and budget.

Motion: to authorize payment of an invoice in the amount of \$23,227.85 to Burton's Fire, Inc. from the Fleet Maintenance Repair and Maintenance operating budget

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 5

NOES: 0

UNFINISHED BUSINESS

12. Agreement with Mobilitie

Information Services Director Mike Luu presented the agreement with Mobilitie for small cell antenna placement. The company was trying to get the terms adopted before Senate Bill 649 was enacted by the state legislature. He reported that two representatives from that company were present.

The goal for this agreement was detailed by City Attorney Chris Diaz. Staff sought to reach the best revenue plan for the City, with the negotiated agreement.

Mr. Luu discussed details of present and future technology, regarding cell and mobile phone service (future 5G, beyond current 4G). There were 64 cell phone towers in Milpitas at this time (the large style ones). There could be many more small cell antennas placed throughout the City in the future. He described financial and other details of the proposed agreement and reported the outcome from a presentation given to the Telecommunications Commission on August 21. Information from neighboring cities and what they were getting for the fees per pole for small cell antennas was provided.

Mayor Tran asked if SB649 failed at the state, then would that give cities more power for where the poles go and the fees. Mr. Luu replied yes on the cost, but not so much on location – especially where gaps needed to be filled.

Councilmember Barbadillo was the Council's liaison to Telecommunication Commission, and noted that Commissioners recommended this deal unanimously to Council when they met in August. He asked staff some design questions on the placement and number of antennas on city property.

Vice Mayor Grilli appreciated hearing the Telecommunications Commission's recommendation. She was not comfortable thinking SB 649 would fail while it was still moving forward. She was happy to learn the antennas were to improve service and she'd rather be in support of having this agreement and to maximize fees.

Mayor Tran stated he was opposed to this agreement. He thought Californians would oppose this bill, as he followed Senators Jim Beall and Bob Wieckowski.

Councilmember Phan wondered about the responsibility of the City, and whether it was to provide the best service or was that for the cellular phone company providers. Being able to negotiate was valuable. He would like more control of that process to maximize the benefit for the community.

Councilmember Nuñez inquired if the four sites had been selected. Mr. Luu replied it was for eight sites that had been determined already.

Mayor Tran invited the applicant to come forward if the company wished to give any presentation. The two men were available to answer questions.

The Mayor asked if the Milpitas school district was consulted about the location of the four small cell antennas around the high school. City Attorney Diaz said yes, the proper process was followed. Vice Mayor Grilli remarked that Milpitas Unified already had leased cell towers on school land.

Motion: to receive the staff report and approve the Agreement between the City of Milpitas and Mobilitie LLC for the use of municipal facilities to install small cell antennas and associated equipment

Motion/Second: Councilmember Barbadillo/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3
NOES: 2 (Phan, Tran)

REPORT

13. Commissions

Acting City Manager Pangelinan noted this was on the agenda at the request of several Councilmembers.

There was no discussion by City Council regarding Commissions, due to the late hour.

Councilmember Nuñez recommended to include the selection process for members to the Commissions, and to bring this item back at the first meeting in October.

He wanted to look at the agenda for items that must be completed at this meeting, and bring back the rest at another date in the future.

Motion: to move agenda items no. 13, no. 14, no. 16, no. 17 and no. 18 to the next meeting

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

14. FY 2016-17 Year End Adjustments

This item was not heard and would be placed on the next agenda.

15. SVO's silicon valley IDEA

Due to the fact that no representative of Silicon Valley Organization was available at the time this item was called, the topic would be continued to the next regular meeting date.

16. Credit Card Policy

This item was not heard and would be placed on the next agenda.

RESOLUTIONS

17. Resolution on Planning Commission By-Laws

This item was not heard and would be placed on the next agenda.

18. Resolution – on Censure Policy

This item was not heard and would be placed on the next agenda.

19. Resolution Opposing Senate Bill 649

This item was heard prior to Item No. 12 (Mobilitie agreement).

City Attorney Diaz presented a report with background information on the small cell antenna issue, and why the legislation was important to cities. Staff drafted a letter and a resolution opposing the Senate Bill.

Councilmember Nuñez asked why it was said to be “good policy.” Mr. Diaz replied that the 5G mobile system was going to be needed eventually for emergency communications across California.

Information Services Director Mike Luu distributed a list of 64 current cell tower locations around the City (not small cell antennas).

Councilmember Nuñez asked if other cities had adopted a resolution. Mr. Diaz could find that out - he was aware many had done so. Mr. Nuñez was in favor of both the letter and the resolution in opposition to SB649.

Vice Mayor Grilli thanked him for the presentation and learned a lot. She spoke of member cities in the League of California Cities that had already adopted a similar opposition resolution (more than half of all in the state).

Councilmember Phan said at the last meeting, he brought up having city-owned cell antennas. He wondered if the City could do economic analysis on that so the City generate its own city revenue on this, and enter into contracts with cell providing companies. Mr. Diaz responded he could float that idea to legal experts, and return to Council to answer if that idea was doable.

Mayor Tran said he noted organizations that were opposed to this legislation. He supported the resolution in opposition.

Motion: to receive the report from staff, and (1) adopt Resolution No. 8697 opposing Senate Bill 649; and (2) authorize the letter opposing Senate Bill 649, to be signed by the Mayor

Motion/Second: Councilmember Phan/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

REPORTS of MAYOR & COUNCILMEMBERS

Councilmember Phan reported that he was no longer serving as the liaison to the Milpitas Chamber of Commerce.

Councilmember Nuñez was glad to continue hearing from residents who spoke out at the meetings and to staff for providing additional information.

Vice Mayor Grilli said the staff and Councilmembers had moved ahead at the Finance Subcommittee recently, with Councilmember Nuñez sitting in for the Mayor. They would bring a report at the September 19 Council meeting. One item was a way to better include the public in the budget process next year.

Mayor Tran thanked all the staff, including department heads and public safety, with the record heat wave last weekend, staying alert and ready to assist residents.

ADJOURNMENT

Mayor Tran adjourned the City Council meeting at 11:51 PM.

The foregoing minutes were approved by Milpitas City Council on September 19, 2017.

Mary Lavelle
Milpitas City Clerk